Supreme Court, U.S.
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No. 97-1374

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

WILLIAM J. CLINTON, *et al.*,
Appellants,
v.
CITY OF NEW YORK, *et al.*,
Appellees.

ROBERT E. RUBIN,
Appellant,
v.
SNAKE RIVER POTATO GROWERS, INC., *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Columbia

MEMORANDUM OF APPELLEES SNAKE RIVER POTATO GROWERS, INC., ET AL. IN RESPONSE TO JURISDICTIONAL STATEMENT

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February 24, 1998

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

Appellees agree with the statement of the Questions Presented made by appellants.

PARTIES TO THE PROCEEDINGS

Appellees agree with the statement of the Parties to the Proceedings made by appellants.

RULE 29.6 LISTING

Appellee Snake River Potato Growers, Inc. is a non-profit agricultural cooperative association incorporated under the laws of Idaho. It has no parent companies or subsidiaries.

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MEMORANDUM OF APPELLEES SNAKE RIVER POTATO GROWERS, INC., ET AL. IN RESPONSE TO JURISDICTIONAL STATEMENT

ARGUMENT

Appellees Snake River Potato Growers, Inc., et al. agree that the Court should note probable jurisdiction in this case, which presents issues of substantial public importance. Appellees have also joined the Solicitor General in moving the Court to set an expedited schedule for briefing and argument.

The *Snake River* case arose from the President's cancellation of Section 968 of the Taxpayer Relief Act of

1997, Pub. L. No. 105-34, 111 Stat. 788, 895-96. The *Snake River* appellees wish to note two points in response to the Jurisdictional Statement:

1. The *Snake River* appellees are not, as the Jurisdictional Statement implies, mere incidental, or secondary, or self-imagined beneficiaries of Section 968. On the contrary, the congressional sponsors and the President both stated that the purpose of Section 968 was to help farm cooperatives buy crop refining and processing facilities, and both made clear their belief that the section would do so.[1] Appellee Snake River Potato Growers is a farm cooperative formed in 1997, by appellee Cranney and others, for the specific purpose of making facilities purchases of the kind Section 968 was designed to assist, and it was actively engaged in negotiating the first such purchase when the President canceled Section 968.

2. The jurisdictional statement, which focuses on the history of government-spending laws, fails to describe what happened, in a jurisprudential sense, when the President canceled Section 968. Section 968 purportedly added a new section, Section 1042(g), to the Internal Revenue Code of 1986, affecting private rights by altering the tax

[1] *See, e.g., Dear Colleague Letter of Reps. Roberts and Stenholm* (Dec. 1, 1995) (Appendix to Memorandum of Plaintiffs Snake River Potato Growers, Inc., et al. In Support of Motion for Summary Judgment and in Opposition to Defendant's Motion to Dismiss ("Snake River App." at Tab 5). President Clinton, in his cancellation message, stated that Section 968 was designed to "encourage value-added farming through the purchase by farmers' cooperatives of refiners or processors of agricultural goods. . . ." Cancellation No. 97-2, 62 Fed. Reg. 43,267, at ¶ 1(C), (E) (J.S. App. 70a-71a). Appellant Rubin agreed. *See Transcript of Press Briefing by Treasury Secretary Bob Rubin, OMB Director Frank Raines, Director, National Economic Council Gene Sperling*, The White House, Office of the Press Secretary (Aug. 11, 1997), at 6 (Snake River App. at Tab 19). As the district court concluded, "[t]he express purpose of section 968 was to help farmers to buy refining and processing facilities by eliminating a tax obstacle facing sellers who sell to them." (J.S. App. 17a, n.10.)

treatment of certain transactions. The President's cancellation of Section 968 permanently removed Section 1042(g) from the Code, as completely as if Section 968 had never been enacted or had been repealed in the manner prescribed by Article I of the Constitution. The issues on the merits in the *Snake River* case are not related to the history of delegated discretionary power over spending or other government activities.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted,

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